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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BERNARD A. TRAVERSAT, GREGORY L. SLAUGHTER,  
THOMAS E. SAULPAUGH, MOHAMED M. ABDELAZIZ,  
MICHAEL J. DUIGOU, ERIC POUYOUL,  
JEAN-CHRISTOPHE HUGLY, LI GONG,  
WILLIAM J. YEAGER, WILLIAM N. JOY, and  
MICHAEL J. CLARY

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Appeal 2009-007247  
Application 10/055,645  
Technology Center 2400

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Before CARLA M. KRIVAK, THOMAS S. HAHN, and  
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the Decision on Appeal of February 2, 2011. Appellants contend the Board erred in the Decision by affirming the Examiner's rejections of claims 1-4, 8-12, 16-18, 23-25, 27, and 28 under 35 U.S.C. § 103(a) (Req. 2-3).<sup>1</sup>

The Decision has been reconsidered in light of Appellants' arguments in the Request for Rehearing and no errors have been found. Therefore, the Decision is not modified for the reasons discussed below.

### ANALYSIS

Appellants contend the Board misapprehends or overlooks facts regarding whether Teodosiu's Patent Application Publication 2002/0062375 ("Teodosiu 2002/0062375") qualifies as prior art (Req. 4).<sup>2</sup> In particular, Appellants contend the portions of Teodosiu 2002/0062375 that the Board relies upon in its Decision are not supported by Teodosiu's Provisional Application 60/252,658 ("Teodosiu 60/252,658") (Req. 5).<sup>3</sup> Further, Appellants contend Teodosiu 60/252,658 does not support at least one claim of Teodosiu 2002/0062375 (Req. 14-15). Appellants also note a decision in

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<sup>1</sup> Appellants have not specifically stated which claims are to be considered in the Request. Thus, because the Examiner's rejection of claims 5, 6, 13-15, 21, 26, and 29-40 was reversed, we refer only to claims 1-4, 8-12, 16-18, 23-25, 27, and 28, which rejections were affirmed.

<sup>2</sup> Appellants assert the subject matter relied upon in Teodosiu 2002/0062375 must be entitled to benefit from the priority date of Teodosiu 60/252,658 to qualify as prior art with respect to the appealed claims (Req. 4-5).

<sup>3</sup> Appellants' contention that every portion of Teodosiu 2002/0062375 the Examiner relies upon in the rejection must be found in Teodosiu 60/252,658 is without merit (Req. 11). The Board's Findings of Fact cite sufficient support by Teodosiu 60/252,658 to affirm the rejection, as discussed in the Decision and as clarified herein.

related Appeal 2007-002225 (Application 10/054,809) where the Board found the Examiner failed to establish Teodosiu 2002/0062375 as prior art (Req. 17-18).<sup>4</sup> Appellants further contend Teodosiu 2002/0062375 does not suggest Appellants' claimed invention (Req. 18-20).

Appellants' argument that specific elements of Teodosiu 2002/0062375 are significantly different from Teodosiu 60/252,658 is without merit (Req. 5-14). Upon closer inspection, there are no appreciable differences between Teodosiu 2002/0062375 and Teodosiu 60/252,658 with respect to the subject matter the Board relies upon (Req. 10-11). For example, Appellants assert Teodosiu 2002/0062375, paragraph [0035], discloses: "'Each RNS server 130 tracks the current network location (in terms of IP addresses and IP port numbers) . . . of all peers assigned to that RNS server,'" that is, it maintains the locations of its peers so that peers may locate each other to access peer resources (Req. 10). Appellants then assert Teodosiu 60/252,658, page 5, discloses: "'As part of the logon protocol, a peer informs its Home RNS server of its current IP address and port number'" (Req. 10). However, regardless of whether tracking and informing are different, Appellants have not taken into account Teodosiu 60/252,658 also discloses: "The RNS Servers maintain information about the published peer content and allow user machines to locate content on their peers. RNS servers also *track* the current status and coordinates (IP address and port number) of the peer machines" (p. 3 (emphasis added)). Thus, Teodosiu

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<sup>4</sup> *Ex parte Traversat*, No. 2007-2225 (BPAI 2007), available at <http://des.uspto.gov/Foia/RetrievePdf?system=BPAI&fNm=fd20072225-08-31-2007-1>.

2002/0062375 and Teodosiu 60/252,658 both disclose the RNS server tracking its peers' locations.

Appellants additionally assert Teodosiu 2002/0062375, paragraph [0035], discloses: “Each RNS server 130 tracks the . . . status (on- or off-line) of all peers assigned to that RNS server,” while the provisional application on page 5 discloses: “Each RNS Server keeps track of the current status of the peer machines that are homed to that server” (Req. 10). Thus, “Teodosiu 60/252,658 does not provide support for the notion that the tracked status is ‘on- or off-line’” (Req. 10). This assertion overlooks the disclosure on page 5 of Teodosiu 60/252,658: “When going online, the Platform [of the peer machine] establishes contact with the RNS Server using the following protocol: . . . *Notify RNS Server that I'm online.*”

Appellants' argument that Teodosiu 60/252,658 does not support at least one claim of Teodosiu 2002/0062375 is also without merit (Req. 14-17). Appellants assert claim 1 of Teodosiu 2002/0062375, which recites “receiving a peer resource request at a resource naming service (RNS) server . . . from a peer platform,” is not supported by Teodosiu 60/252,658's disclosure at page 6: “when a user or a peer-to-peer application tries to access a peer resource, the request is intercepted by the Platform . . . To resolve a location for the peer content, the Platform communicates with the Home RNS Server” (Req. 15-16). However, the platform's interception of a peer resource request and communication with the RNS Server to resolve a location for the requested content, that is, the platform's communication of a peer resource request to the RNS Server, meets Teodosiu 2002/0062375's claim 1 limitation of receiving a peer resource request “from a peer platform.”

Appellants also allege the limitations “generating a peer resource response based on the peer resource request” and “returning the peer resource response to the peer platform . . . said peer resource response to enable the peer platform to access a peer resource” in Teodosiu 2002/0062375’s claim 1 are not supported by Teodosiu 60/252,658’s disclosure on page 6: “If the RNS Server was able to locate the file, it returns two pieces of information to the requesting peer: . . . A list of (IP Address, port) pairs of locations that can serve the requested content” (Req. 16-17). However, the RNS Server’s return of IP addresses to the requesting peer meets both the recited “generating” and “returning” claim limitations. It should be noted there is no requirement Teodosiu 60/252,658 describe Teodosiu 2002/0062375’s claims *in haec verba*. See MPEP § 2163.02. Further, there is no requirement Teodosiu 60/252,658 provide written description support for Appellants’ claims, as Appellants assert (Req. 6-7).

Regarding Appellants’ reliance on the decision in Appeal 2007-002225, the Board in that case did not reach a conclusion as to whether Teodosiu 2002/0062375 was supported by either provisional application to which priority was claimed. In contrast, in the instant case, the Examiner has pointed to support for Teodosiu 2002/0062375 in Teodosiu 60/252,658. Further, it is well settled that the prosecution of one patent application does not affect the prosecution of an unrelated application. *In re Wertheim*, 541 F.2d 257, 264 (CCPA 1976) (holding that “it is immaterial in ex parte prosecution whether the same or similar claims have been allowed to others”). See also *In re Giolito*, 530 F.2d 397, 400 (CCPA 1976) (“We reject appellants’ argument that the instant claims are allowable because

similar claims have been allowed in a patent. It is immaterial whether similar claims have been allowed to others.”).

Appellants’ argument that Teodosiu 2002/0062375 does not disclose Appellants’ claimed limitation “wherein at least a subset of the peer nodes are configured to participate in a peer discovery protocol to discover other peer nodes” is not persuasive for the reasons set forth in the Decision (Req. 18). The Board does not find peer nodes and peer resources are the same, as Appellants assert (Req. 19). Rather, the Board finds Teodosiu 2002/0062375 discloses a peer locates a particular peer resource by making a request to an RNS server, which returns the locations of other peers where the requested resource is available to the requesting peer (Dec. 4). Thus, the requesting peer effectively identifies other peers upon receiving the locations of other peers where the requested peer resource is available. Teodosiu 2002/0062375 discloses a requesting peer must discover the identity of other peers to access a peer resource at any of the other peers. Although Teodosiu 2002/0062375 requires the RNS server to discover other peer nodes, claim 1 is broadly written and does not preclude employing an intermediary RNS server. Teodosiu 2002/0062375 therefore meets the claim limitation “wherein at least a subset of the peer nodes are configured to participate in a peer discovery protocol to discover other peer nodes.”

## DECISION

Appellants’ Request for Rehearing is granted to the extent that the Decision was reconsidered, but is denied with respect to modifying the Decision.

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Application 10/055,645

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REQUEST FOR REHEARING DENIED

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